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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/897,823	06/29/2001	Gregory Ashton	8618	9706

27752 7590 01/28/2004

THE PROCTER & GAMBLE COMPANY  
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EXAMINER

FLYNN, AMANDA R

ART UNIT PAPER NUMBER

3743

DATE MAILED: 01/28/2004

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Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/897,823

Applicant(s)

ASHTON ET AL.

Examiner

Amanda R. Flynn

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 12 January 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1,3,5-23 and 25-38 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1,3,5-23 and 25-30 is/are allowed.
- 6) ☒ Claim(s) 31 and 35 is/are rejected.
- 7) ☒ Claim(s) 32-34 and 36-38 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 18 December 2002 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.  
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_ 6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### *Claim Rejections - 35 USC § 103*

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claim 31 is rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent Number 6,383,170 to Mishima et al. in view of U.S. Patent Number 6,120,632 to Dragoo et al.

Mishima et al. disclose an absorbent article comprising a containment assembly having a front waist region (20), a back waist region (22), a crotch region (21), side edges defining leg openings when the article is closed with leg opening margins at the edges, a topsheet (2), a backsheet (3) and an absorbent core (4) disposed between the topsheet and backsheet. Mishima et al. disclose at least one elastic outer gasket leg cuff (12). Mishima et al. do not specify that the gasket cuffs could be made of an incrementally stretched laminate.

Dragoo et al. disclose an absorbent article having barrier cuffs made of an "activated region" that is preferably formed of an incrementally stretched laminate to impart a varying degree of elasticity, as taught by Patent Number 5,156,793 (see column 5, lines 47-65).

It would have been obvious to one skilled in the art at the time the invention was made to have provided the absorbent article as disclosed by Mishima et al., wherein the gasket cuffs are made of an incrementally stretched laminate, as taught by Dragoo et al., to impart a varying degree of elasticity to the cuff.

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3. Claim 35 is rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent Number 6,613,033 to Popp et al. in view of Dragoo et al.

Popp et al. disclose a pre-closed absorbent article comprising a containment assembly having a front waist region (138), a back waist region (139), a crotch region, side edges defining leg openings (12) when the article is closed, with leg opening margins at the edges, a topsheet (42), a backsheet (44) and an absorbent core (144) disposed between the topsheet and backsheet. Mishima et al. disclose at least one outer gasket leg cuff (10). Popp et al. do not specify that the gasket cuffs could be made of an incrementally stretched laminate.

Dragoo et al. disclose an absorbent article having barrier cuffs made of an “activated region” that is preferably formed of an incrementally stretched laminate to impart a varying degree of elasticity, as taught by Patent Number 5,156,793 (see column 5, lines 47-65).

It would have been obvious to one skilled in the art at the time the invention was made to have provided the absorbent article as disclosed by Popp et al., wherein the gasket cuffs are made of an incrementally stretched laminate, as taught by Dragoo et al., to impart a varying degree of elasticity to the cuff.

***Allowable Subject Matter***

4. Claims 1, 3, 5-23 and 25-30 are allowed.

5. Claims 32-34 and 36-38 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

*Response to Arguments*

6. Applicant's arguments filed on 12 January 2004 have been fully considered but they are not persuasive.

With respect to the rejection of claims 31 and 35, Applicant argues that the combination of the Mishima et al. or Popp et al. reference with the Dragoo et al. reference is improper because it lacks a proper suggestion or motivation for the combination. Applicant argues "the cited Dragoo et al. reference described barrier leg cuffs including incrementally stretched laminate rather than outer leg cuffs having this structure," and therefore provides no motivation to modify the outer leg cuffs of Mishima et al., to the form of an incrementally stretched laminate.

The Examiner disagrees with this argument. Dragoo et al. state that the barrier leg cuffs of their diaper can be made by the method described in U.S. Pat. No. 5,156,793 to Buell et al. While Dragoo et al. employ this method to make their barrier leg cuffs from an incrementally stretched laminate, the incorporated teaching of Buell et al. shows using an incrementally stretched laminate in a more general sense. See column 1 of Buell et al. Buell et al. do not limit their teaching to making "barrier leg cuffs" from incrementally stretched laminate, but teach the desirability of using this type of material on many different components of absorbent articles to impart varying degrees of elasticity. Dragoo et al. incorporate the teachings disclosed by Buell et al. and therefore, the teachings of the Buell et al. reference are in fact part of the Dragoo et al. reference. Therefore, the Examiner believes that the combination of the Mishima et al. or Popp et al. reference, with the Dragoo et al. reference is indeed proper, because Dragoo et al. provides a

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teaching and motivation for the general desirability of using incrementally stretched laminate in the making of any component of absorbent articles.

Applicant also argues that the Dragoo et al. reference does not disclose any need or desire to “impart a varying degree of elasticity” to the cuff, and that this statement was merely taken from a title mentioned in the Dragoo et al. reference. As noted above, Dragoo et al. state that the method disclosed by Buell et al. can be used in the creation of their diaper. The desire to “impart a varying degree of elasticity” to a component of a diaper is clearly taught by the Buell et al. reference, which is incorporated by Dragoo et al.

### ***Conclusion***

7. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

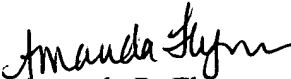
A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Amanda R. Flynn whose telephone number is 703-306-4056. The examiner can normally be reached on Monday-Thursday, 8:30 - 6:00 and alternate Fridays.

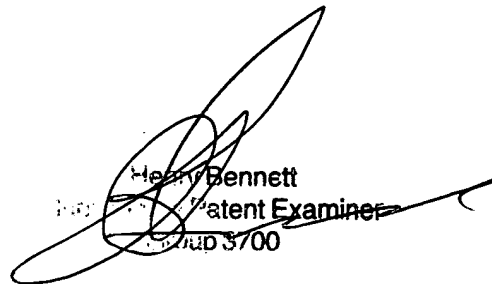
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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Henry A. Bennett can be reached on 703-308-0101. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1113.

  
Amanda R. Flynn  
Examiner  
Art Unit 3743

  
arf

  
Henry A. Bennett  
Patent Examiner  
Group 3700